

APPEAL NO. 040065
FILED FEBRUARY 17, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 4, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that because the claimant did not sustain a compensable injury the claimant did not have disability. The claimant appeals, asserting that the hearing officer applied the wrong legal standard in deciding this matter and the respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

There appears to be no dispute that the claimant has a herniated disc at L3-4. The claimant testified that he was injured while unloading carpet padding from a truck. The claimant testified that he had a roll of the padding on his shoulder when he attempted to move another roll, which had fallen, out of the way. As he attempted to move the roll, he noticed someone's foot was on the plastic bag containing the roll. As he turned to see who's foot it was, that individual, the claimant's manager, hit the roll of padding the claimant had on his shoulder. The blow twisted the claimant's upper body completely around, thereby causing a lumbar spine injury. The claimant's manager testified that the event never occurred. It is the carrier's position that this entire claim is a fabrication by the claimant.

On appeal, the claimant asserts that the hearing officer abused his discretion by requiring him to prove his case "beyond a reasonable doubt" as opposed to by the "preponderance of the evidence." We cannot agree with that assertion. Because the claimant's testimony and that of his manager were directly in conflict, the hearing officer was faced with deciding which version accurately reflected the events of _____. The hearing officer specifically stated that he did not find the claimant to be credible. The hearing officer may believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The mere fact that a hearing officer does not believe the testimony of a party does not mean that he or she is applying an inappropriate standard. Nothing in our review of the record indicates that the hearing officer abused his discretion or applied the wrong burden of proof to the facts of this matter.

The claimant had the burden to prove that he was injured in the course and scope of employment and that he has had disability. Conflicting evidence was presented at the hearing. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred

at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). Our review of the record reveals that the hearing officer's injury and disability determinations were supported by sufficient evidence and are not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ST. PAUL FIRE AND MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge